**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.5008 OF 2006.**

Vijay A. Patil & Others ..Appellants

versus

Nashik Nathu Patil
& Others ..Respondents.

Mr.P.S.Dani for the Petitioners

A.G.Bhaktwani for the respondents

**Coram : S.R.Sathe, J.**
**Dated : 25th January, 2007**

P.C.

1. Rule, returnable forthwith.

2. Heard both the learned Advocates. Perused the papers. The original plaintiff has preferred this petition against the order passed dated 19.6.2006 whereby the plaintiffs application for amendment was rejected.

3. From the submissions made before me and from the record it is very clear that initially the plaintiffs 1 to 3 had filed suit simplicitor for permanent injunction. During the pendency of the suit defendant No.4 was added because suit property was sold to him. Subsequently, another application was moved wherein it was stated that the defendant

No.4 apprehends that the defendant would continue to obstruct him and as such injunction be granted against the plaintiffs.

4. The learned trial judge rejected the said application holding that the plaintiff No.4 is claiming relief in respect of fresh cause of action. As original plaintiffs 1 to 3 have sold the property to plaintiff No.3, the relief sought by original plaintiffs 1 to 3 have come to an end and if at all plaintiff no.4 is apprehending that defendants would continue to obstruct him, he should file a separate suit. The learned trial Judge therefore held that the amendment is not necessary.

5. Firstly, it must be noted that by virtue of earlier amendment application plaintiff No.4 was already impleaded in the suit. So, in a way he had stepped into the shoes of plaintiffs 1 to 3. The apprehension of plaintiff no.1 was not unreasonable. The obstruction was in respect of the possession of the suit property. Whether it is held by 1 to 3 or by plaintiff No.4. The main question is whether defendants are entitled to obstruct the owner of the suit property. By virtue of the proposed amendment

the plaintiffs were not asking any new relief nor it can be said that there was any change in the original nature of the suit. Even the learned trial judge has also held that the proposed amendment will not change the nature of the suit. When such was the position, in order to avoid multiplicity of proceedings and to decide the real controversy between the parties it was necessary to allow the amendment. It cannot be said that the proposed amendment was such that it was likely to cause prejudice to the defendants. In fact in case of **Sampath Kumar vs. Ayyakannu and another reported in (2002)7 Supreme Court Cases, 559** the Apex Court has also held that if amendment is sought seeking to introduce the cause of action which arose during pendency of the suit, and if it is not going to change the basic structure of the suit then such amendment is to be allowed to avoid multiplicity of the suits. I, therefore, feel that the order passed by the learned trial Judge is not legal and correct. So, keeping in view the main object of Order VI Rule 17 of CPC the order passed by the learned judge is set aside.

6. Rule made absolute.

7. Plaintiff is allowed to carry out the amendment proposed in his application dated 15.6.2006. The amendment to be carried out within one month from today in the original suit. After the said amendment, the defendants are at liberty to file additional written statement if any with regard to the amended plaint.

8. Petition disposed of in above terms.

**(S.R.Sathe, J.)**